



Executive Committee

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LRB096 04161 AJ0 27108 a

1 AMENDMENT TO SENATE BILL 268

2 AMENDMENT NO. _____. Amend Senate Bill 268 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Residential Real Property Disclosure Act is
5 amended by changing Section 70 as follows:

6 (765 ILCS 77/70)

7 Sec. 70. Predatory lending database program.

8 (a) As used in this Article:

9 "Adjustable rate mortgage" or "ARM" means a closed-end
10 mortgage transaction that allows adjustments of the loan
11 interest rate during the first 3 years of the loan term.

12 "Borrower" means a person seeking a mortgage loan.

13 "Broker" means a "broker" or "loan broker", as defined in
14 subsection (p) of Section 1-4 of the Residential Mortgage
15 License Act of 1987.

16 "Closing agent" means an individual assigned by a title

1 insurance company or a broker or originator to ensure that the
2 execution of documents related to the closing of a real estate
3 sale or the refinancing of a real estate loan and the
4 disbursement of closing funds are in conformity with the
5 instructions of the entity financing the transaction.

6 "Counseling" means in-person counseling provided by a
7 counselor employed by a HUD-certified counseling agency to all
8 borrowers, or documented telephone counseling where a hardship
9 would be imposed on one or more borrowers. A hardship shall
10 exist in instances in which the borrower is confined to his or
11 her home due to medical conditions, as verified in writing by a
12 physician, or the borrower resides 50 miles or more from the
13 nearest participating HUD-certified housing counseling agency.
14 In instances of telephone counseling, the borrower must supply
15 all necessary documents to the counselor at least 72 hours
16 prior to the scheduled telephone counseling session.

17 "Counselor" means a counselor employed by a HUD-certified
18 housing counseling agency.

19 "Credit score" means a credit risk score as defined by the
20 Fair Isaac Corporation, or its successor, and reported under
21 such names as "BEACON", "EMPIRICA", and "FAIR ISAAC RISK SCORE"
22 by one or more of the following credit reporting agencies or
23 their successors: Equifax, Inc., Experian Information
24 Solutions, Inc., and TransUnion LLC. If the borrower's credit
25 report contains credit scores from 2 reporting agencies, then
26 the broker or loan originator shall report the lower score. If

1 the borrower's credit report contains credit scores from 3
2 reporting agencies, then the broker or loan originator shall
3 report the middle score.

4 "Department" means the Department of Financial and
5 Professional Regulation.

6 "Exempt person" means that term as it is defined in
7 subsections (d)(1) and (d)(1.5) of Section 1-4 of the
8 Residential Mortgage License Act of 1987.

9 "First-time homebuyer" means a borrower who has not held an
10 ownership interest in residential property.

11 "HUD-certified counseling" or "counseling" means
12 counseling given to a borrower by a counselor employed by a
13 HUD-certified housing counseling agency.

14 "Interest only" means a closed-end loan that permits one or
15 more payments of interest without any reduction of the
16 principal balance of the loan, other than the first payment on
17 the loan.

18 "Lender" means that term as it is defined in subsection (g)
19 of Section 1-4 of the Residential Mortgage License Act of 1987.

20 "Licensee" means that term as it is defined in subsection
21 (e) of Section 1-4 of the Residential Mortgage License Act of
22 1987.

23 "Mortgage loan" means that term as it is defined in
24 subsection (f) of Section 1-4 of the Residential Mortgage
25 License Act of 1987.

26 "Negative amortization" means an amortization method under

1 which the outstanding balance may increase at any time over the
2 course of the loan because the regular periodic payment does
3 not cover the full amount of interest due.

4 "Originator" means a "loan originator" as defined in
5 subsection (hh) of Section 1-4 of the Residential Mortgage
6 License Act of 1987, except an exempt person.

7 "Points and fees" has the meaning ascribed to that term in
8 Section 10 of the High Risk Home Loan Act.

9 "Prepayment penalty" means a charge imposed by a lender
10 under a mortgage note or rider when the loan is paid before the
11 expiration of the term of the loan.

12 "Refinancing" means a loan secured by the borrower's or
13 borrowers' primary residence where the proceeds are not used as
14 purchase money for the residence.

15 "Title insurance company" means any domestic company
16 organized under the laws of this State for the purpose of
17 conducting the business of guaranteeing or insuring titles to
18 real estate and any title insurance company organized under the
19 laws of another State, the District of Columbia, or a foreign
20 government and authorized to transact the business of
21 guaranteeing or insuring titles to real estate in this State.

22 (a-5) A predatory lending database program shall be
23 established within Cook County. The program shall be
24 administered in accordance with this Article. The inception
25 date of the program shall be July 1, 2008. A predatory lending
26 database program shall be expanded to include Kane, Peoria, and

1 Will counties. The inception date of the expansion of the
2 program as it applies to Kane, Peoria, and Will counties shall
3 be January 1, 2010. Until the inception date, none of the
4 duties, obligations, contingencies, or consequences of or from
5 the program shall be imposed. The program shall apply to all
6 mortgage applications that are governed by this Article and
7 that are made or taken on or after the inception of the
8 program.

9 (b) The database created under this program shall be
10 maintained and administered by the Department. The database
11 shall be designed to allow brokers, originators, counselors,
12 title insurance companies, and closing agents to submit
13 information to the database online. The database shall not be
14 designed to allow those entities to retrieve information from
15 the database, except as otherwise provided in this Article.
16 Information submitted by the broker or originator to the
17 Department may be used to populate the online form submitted by
18 a counselor, title insurance company, or closing agent.

19 (c) Within 10 days after taking a mortgage application, the
20 broker or originator for any mortgage on residential property
21 within the program area must submit to the predatory lending
22 database all of the information required under Section 72 and
23 any other information required by the Department by rule.
24 Within 7 days after receipt of the information, the Department
25 shall compare that information to the housing counseling
26 standards in Section 73 and issue to the borrower and the

1 broker or originator a determination of whether counseling is
2 recommended for the borrower. The borrower may not waive
3 counseling. If at any time after submitting the information
4 required under Section 72 the broker or originator (i) changes
5 the terms of the loan or (ii) issues a new commitment to the
6 borrower, then, within 5 days thereafter, the broker or
7 originator shall re-submit all of the information required
8 under Section 72 and, within 4 days after receipt of the
9 information re-submitted by the broker or originator, the
10 Department shall compare that information to the housing
11 counseling standards in Section 73 and shall issue to the
12 borrower and the broker or originator a new determination of
13 whether re-counseling is recommended for the borrower based on
14 the information re-submitted by the broker or originator. The
15 Department shall require re-counseling if the loan terms have
16 been modified to meet another counseling standard in Section
17 73, or if the broker has increased the interest rate by more
18 than 200 basis points.

19 (d) If the Department recommends counseling for the
20 borrower under subsection (c), then the Department shall notify
21 the borrower of all participating HUD-certified counseling
22 agencies located within the State and direct the borrower to
23 interview with a counselor associated with one of those
24 agencies. Within 10 days after receipt of the notice of
25 HUD-certified counseling agencies, the borrower shall select
26 one of those agencies and shall engage in an interview with a

1 counselor associated with that agency. Within 7 days after
2 interviewing the borrower, the counselor must submit to the
3 predatory lending database all of the information required
4 under Section 74 and any other information required by the
5 Department by rule. Reasonable and customary costs not to
6 exceed \$300 associated with counseling provided under the
7 program shall be paid by the broker or originator. The
8 Department shall annually calculate to the nearest dollar an
9 adjusted rate for inflation. A counselor shall not recommend or
10 suggest that a borrower contact any specific mortgage
11 origination company, financial institution, or entity that
12 deals in mortgage finance to obtain a loan, another quote, or
13 for any other reason related to the specific mortgage
14 transaction; however, a counselor may suggest that the borrower
15 seek an opinion or a quote from another mortgage origination
16 company, financial institution, or entity that deals in
17 mortgage finance. A counselor or housing counseling agency that
18 in good faith provides counseling shall not be liable to a
19 broker or originator or borrower for civil damages, except for
20 willful or wanton misconduct on the part of the counselor in
21 providing the counseling.

22 (e) The broker or originator and the borrower may not take
23 any legally binding action concerning the loan transaction
24 until the later of the following:

25 (1) the Department issues a determination not to
26 recommend HUD-certified counseling for the borrower in

1 accordance with subsection (c); or

2 (2) the Department issues a determination that
3 HUD-certified counseling is recommended for the borrower
4 and the counselor submits all required information to the
5 database in accordance with subsection (d).

6 (f) Within 10 days after closing, the title insurance
7 company or closing agent must submit to the predatory lending
8 database all of the information required under Section 76 and
9 any other information required by the Department by rule.

10 (g) The title insurance company or closing agent shall
11 attach to the mortgage a certificate of compliance with the
12 requirements of this Article, as generated by the database. If
13 the title insurance company or closing agent fails to attach
14 the certificate of compliance, then the mortgage is not
15 recordable. In addition, if any lis pendens for a residential
16 mortgage foreclosure is recorded on the property within the
17 program area, a certificate of service must be simultaneously
18 recorded that affirms that a copy of the lis pendens was filed
19 with the Department. If the certificate of service is not
20 recorded, then the lis pendens pertaining to the residential
21 mortgage foreclosure in question is not recordable and is of no
22 force and effect.

23 (h) All information provided to the predatory lending
24 database under the program is confidential and is not subject
25 to disclosure under the Freedom of Information Act, except as
26 otherwise provided in this Article. Information or documents

1 obtained by employees of the Department in the course of
2 maintaining and administering the predatory lending database
3 are deemed confidential. Employees are prohibited from making
4 disclosure of such confidential information or documents. Any
5 request for production of information from the predatory
6 lending database, whether by subpoena, notice, or any other
7 source, shall be referred to the Department of Financial and
8 Professional Regulation. Any borrower may authorize in writing
9 the release of database information. The Department may use the
10 information in the database without the consent of the
11 borrower: (i) for the purposes of administering and enforcing
12 the program; (ii) to provide relevant information to a
13 counselor providing counseling to a borrower under the program;
14 or (iii) to the appropriate law enforcement agency or the
15 applicable administrative agency if the database information
16 demonstrates criminal, fraudulent, or otherwise illegal
17 activity.

18 (i) Nothing in this Article is intended to prevent a
19 borrower from making his or her own decision as to whether to
20 proceed with a transaction.

21 (j) Any person who violates any provision of this Article
22 commits an unlawful practice within the meaning of the Consumer
23 Fraud and Deceptive Business Practices Act.

24 (k) During the existence of the program, the Department
25 shall submit semi-annual reports to the Governor and to the
26 General Assembly by May 1 and November 1 of each year detailing

1 its findings regarding the program. The report shall include,
2 by county, at least the following information for each
3 reporting period:

4 (1) the number of loans registered with the program;

5 (2) the number of borrowers receiving counseling;

6 (3) the number of loans closed;

7 (4) the number of loans requiring counseling for each
8 of the standards set forth in Section 73;

9 (5) the number of loans requiring counseling where the
10 mortgage originator changed the loan terms subsequent to
11 counseling;—

12 (6) the number of licensed mortgage brokers and loan
13 originators entering information into the database;

14 (7) the number of investigations based on information
15 obtained from the database, including the number of
16 licensees fined, the number of licenses suspended, and the
17 number of licenses revoked;

18 (8) a summary of the types of non-traditional mortgage
19 products being offered; and

20 (9) a summary of how the Department is actively
21 utilizing the program to combat mortgage fraud.

22 (Source: P.A. 94-280, eff. 1-1-06; 94-1029, eff. 7-14-06;
23 95-691, eff. 6-1-08; revised 11-6-08.)

24 Section 99. Effective date. This Act takes effect upon
25 becoming law."